IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11211 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

KHUMANSINH RAMSINH MAHIDA - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 06/07/2005

ORAL JUDGMENT

1. Though served, nobody appears on behalf of the respondent.

2. In this petition under Articles 226 and 227 of the Constituion of India, the petitioner GSRTC has challenged the legality and validity of the judgment and award dated 14.2.2005 passed by the

Labour Court, Bharuch passed in Reference No.14 of 1998 in partly allowing the said reference by quashing and setting aside the order of dismissal imposed by the disciplinary authority and directing the petitioner to reinstate the respondent owrkman without backwages.

3. The respondent workman was serving as Conductor with the petitioner Corporation. While he was on duty on 15.7.93 though he has collected the fare from one pasenger out of 17 passengers did not issue ticket and therefore, departmental inquiry was initiated against him. The Inquiry Officer after giving an opportunity to the respondent workman and considering the evidence on record held the charges proved against the respondent workman and the disciplinary authority passed the order of imposing punishment of dismissal of respondent workman from service. Being aggrieved and dissatisfied with the same, the respondent workman raised the industrial dispute which was referred to the Labour Court, Bharuch for its adjudication which was numbered as Reference No.14 of 1998. The respondent workman has challenged the legality and validity of the inquiry officer. Note only that but even before the Inquiry Officer he has admitted the charge of not issuing ticket to one passenger though fare was collected. On appreciation of

evidence, the Labour Court found the charged proved against the respondent workman and only on the ground that nothing was on record to show that during his 26 years service career, there was any case against him and that the amuont involved was to meager, the Labour Court, Bharuch interefered with the order of dismissal exercisign the powers under Section-11-A of the Industrial Disputes Act and by quashing and setting aside the order of dismissal directed the petitioner to reinstate the respondent workman without backwages and as fresh appointment. Being aggrievd and dissatisfied with the judgment and award passed by the Labour Court, Bharuch dated 14.2.2005 passed in Reference No.14 of 1998 the petitioner Corporation has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

4. Shri Hardik Rawal, learned advocate appearing on behalf of the petitioner Corporation has vehemently submitted that in view of the fact that the respondent workman has in fact admitted the charge levelled against him with regard to non issuance of tickets to one passenger out of 17 passengers and not issuing of ticket, the labuor court was not justified in substituting the punishment of

dismissal and direcng the petitioner to reinstate the respondent workman as fresh appointee. He has also further submitted that in fact there were 80 defaults in past against the respondent workman, howerver, the Officer of the petitioner Corporation did not produce default card before the labour court and for which, necessary departmental action is already initiated against the erring officer. It is also further submitted that reasoning given by the labour court that the amount involved is too meager and therefore the order of dismissal is harsh and / or disproportionate is also perverse. He has relied upon the judgment of the Hon'ble Supreme Court in case of JANATHA BAZAR (SOUTH KANARA CENTRAL COOPERATIVE WHOLESALE STORES LTD) AND OTHERS V. SECRETARY, SAHAKARI NOUKARARA SANGHA AND OTHERS, 2000 (7) SCC 517, more particularly, para-5 & 6 of the said judgment and has submitted that as held by the Hon'ble Supreme Court if India in the aforesaid decision, once an act of misappropriate is proved, may be for a small or large amount, there is no question of shwoing uncalled for sympathay and reinstating the employees in service. Relying on the judgment of the Hon'ble Supreme Court of India in case REGIONAL MANAGNER, U.P. SRTC, ETAWAH AND OTHERS V. HOTILAL AND ANOTHER

reported in (2203) 3 SCC 605, Shri Rawal has submitted that if the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functiioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be deal with iron hands. Relying on the aforesaid judgments Shri H.C.Rawal has submitted that the labour court has shown undue sympathy in favour of the respondent workman by directing the petitioner to reinstate the respondent workman and to give him one additional opportunity to indulge into such type of misconduct. He has also further submtited that even another reason given by the Labour Court that there is no default pointed out in his last 26 years of service career and this seems to be his first default, is also not warranted. He has further submitted that once the charge of misappropriate and corrouption is proved, even if it is a first default, no lenient view should be taken in favour of the respondent workman, and in support of the aforesaid submissin, he has relied upon the judgment of teh Division Bench of this Court in case of GUJARAT STATE ROAD TRANSPORT CORPORATION VS. JAMNADAS BECHARBHAI, 1982 GLH 1057 and judgment of this Court in case of GUJARAT STATE ROAD TRASNPORT CORPORATION V. KACHARAJI MOTIJI PARMAR, 1993 (1) GLR

302. He has relied upon observations made by this Cuort in Para-5 which reads as under :

> “Take for instance the delinquent that putin 29 years of continous length of service and had unblemished record; in 30th yer he commits defalcation of public money or fabricates also records to conceal misappropriation. He only commited once. Does it men that he shouldnot be inflicted with the punishmen of dismisal but be allowed to continue in sevie for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct.”

5. For the aforesaid reasons and submissions, Shri H.C.Rawal, learned advocate appearing on behalf of the petitioner has requested to allow the present special civil application.

6. It is not in dispute that charge against the respondent workman was for collecting the fare and not issuing tickets. The respondent workman has also admitted the charge and has given

the statement before the Inquiry Officer. The labour court has also on appreciation of evidence has held that charges agaisnt the respondent workman are proved. It is also not in dispute that the respondent workman was a conductor and was holding post of turst and confidence, where honesty and integrity are inbuilt requiremetns of functiioning and inspite of the aforesaid facts, the labour court has interefered with the order of dismissal by exercising the powers under Section-11-A of the I.D.Act mainly on the ground that this seems to be his first default and secondly nothing is on record that there was any misconduct alleged against the respondent workman during last 26 years service career and that the amount involved is too meager. As the identical question came to be considered by the Hon'ble Supreme Court of India in case of JANATHA BAZAR (SOUTH KANARA CENTRAL COOPERATIVE WHOLESALE STORES LTD) AND OTHERS V. SECRETARY, SAHAKARI NOUKARARA SANGHA AND OTHERS, (Supra). The para-5 & 6 of the aforesaid judgment since relevant and important, are quoted as under:

> Para-5 – Being aggrieved by the common order passed by the learned Single Judge, both the parties filed Writ Appeals Nos.8795 of 1996 and 1954 of 1997 before the Division Bench of the High Court. The Division Bench found that

the Labour Court had arrived at its conclusion after thoroughly considering the entire evidence, and therefore, it did not call for any interference. Further, with regard to the question whether the Labour Court was justified in interfering with the order of dismissal passed by the disciplinary authority in exercise of its powers under Section 11-A of the Act, the High Court came to the conclusion that the Labour Court gave reasons for coming to its conclusion and those reasons could be considered as justifiable and sufficient grounds to interfere with the punishment imposed by the employer. By common judgment and order dated 18-91998, the writ appeals were dismissed. Hence, these appeals by special leave."

"Para - 6. As stated above, the learned Single Judge and Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled. (Re. Municipal Committee, Bahadurgarh vs. Krishnan Behari). In U.P. SRTC vs. Basudeo Chaudhary this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs. 65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs. 2.35 but recovering @ Rs. 5.35 per head and also by making entry in the waybill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs. 2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly, in Punjab Dairy Development Corporation Ltd. vs. Kala Singh, this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the

misconduct that he inflicted the quantum of milk supplies in the milk centres and also inflated the quality of a fat contents where there were less fat contents. The Court held (at SCC pp.161-62 para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the ID Act to grant relief with minor penalty."

In similarly situated case, the Division Bench of this Court in case of GSRTC VS. JAMNADAS BECHARBHAI (Supra) in para-2 has held as under :

"2. We are however, constrained to elaborate the rider added by us in proposition no. 9 wherein it has been observed by us that when an employee holding a sensitive post of trust has been dismissed from service the matter may have to be viewed in a different light. By way of illustration we have referred to pilferage by a cashier or a store-keeper from the stores in his charge. Perhaps we should have anticipated a situation like the present and referred to misappropriation by a bus conductor who has collected fare from passengers but has failed to issue tickets to them. If a bus conductor has been dismissed in such circumstances, his reinstatement in the same post would enable him to indulge in the same malpractice in future. Everyday, he has to collect fare and issue tickets. Reinstatement in the same post would therefore, involve grave risk because of the repetitive opportunity that he would get to indulge in the malpractice and the daily temptation that he would face. Perhaps he would be tempted to repair the past losses. Under the circumstances, when in a fit case the Labour Court reaches the conclusion that misappropriation by a bus conductor has been established (in view of the evidence showing that he had collected the fare from the passengers but had not issued tickets though he had sufficient opportunity to do so in circumstances going to show that there was a dishonest intention, the Labour Court would have to think more than twice before directing reinstatement in the same post as conductor wherein he would be afforded the same opportunity or faced with the same temptation and the Corporation would be exposed to the same risk every day. Be it realised that misappropriation by a bus conductor must be

> viewed with a degree of seriousness especially having regard to the fact that it would make successful working a public Corporation impossible. In case misappropriation by a conductor is detected and he is found guilty, punishment must be deterrent to him as also to others, for misappropriation in such circumstances, would be in relation to public moneys and the burden would fall on the shoulders of the common man. And be it realised that 80 per cent of the total tax burden consists of indirect taxes which makes it impossible for the common man to stand erect and virtually makes him crouch on the ground. There is another tormenting reason for viewing the matter with anxious eyes. The Public Sector can never (NEVER) succeed if "everyone's property (which it in fact is) is treated as "no one's property. The New Culture for the New Man of New India must therefore be National Interest above all other interests including self-interest, sectional interest or class-interest. And therefore, the bus conductor, poor as he is, may have to suffer. We suffer more than him in having to say so, particularly, because big sharks never get caught. If they get caught they more often than not escape with impunity. But then merely because we cannot prevent the sharks escaping we cannot permit the fly to trifle with Public Property which is the poor men's collective property (if we envision for them a sun-lit day even on some distant tomorrow in the hidden future). Under the circumstances, the Labour Court was not justified in reinstating a conductor who had collected fare, pocketed the same, and robbed the National Exchequer, in he same post where he could reindulge in the same weakness at public cost. The Labour Court, can depending upon facts and circumstances of the case and of the offender direct that he should be absorbed in the workshop section or some other similar post which does not involve daily handling of money. That must be left to the Labour Court. And the Labour Court would have to decide the issue having regard to facts and circumstances of each case and the demands of the situation in the context of each matter." (Emphasis supplied).

7. Even in para-7 and 8 of the judgment in case of JANATHA BAZAR (SUPRA), the Hon'ble Supreme Court has held that in case of proved misappropriation, there is not question of considering

past record. It is discretion of the employer to consider the same in appropriate cases but the labour court cannot substitute the penalty imposed by the employer in such cases. In the instant case, though nothing is produced on record before the Labour Court but in fact, there were 80 defaults in the past credit of the respondent workman but it stated in the petition that the concerned Officer did not produce the same before the Labour Court, however, the departmental inquiry is already initiated against the erring Officer.

8. Relying on another decision the Hon'ble Supreme Court of India in case of KARNATAKA STATE ROAD TRANSPORT CORPORATION V. B.S.HULLIKATTI reported in 2001 (2) SCC 574 in para-6, it is submitted that the labour court in case involving misappropriation should not exercise and show misplaced sympathy in favour of the respondent workman. Observations in para-6 of the aforesaid judgment reads as under :

9. “It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination

knowing fully well the correct fare to be charged. It is the responsibility of the Bus Consuctors to collect the fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the company. They act in a fiduciary capacity and it wuold be a cse of gross misconct if knowingly they do not collect any fare or the correct amoutn of fare."

10. In view of the aforesaid decisions of the Hon'ble Supreme Court of India as well as this Court, it appars that the labuor court has exceeded in its jurisdiction in exercise of the powers under Section-11-A of the I.D.Act while quashing and setting aside th order of dismissal, more particularly, when the charge of misappropriate i.e not collecting the fare and not issuing the tickets to the passengers was proved and in fact admitted by the respondent workman. Therefore, it is obvious that the labour court has has shown undue and misplaced sympathy in favour of the respondent workman. Under the circumstances, the impugned judgment passed by the Labour Court, Bharuch in directing the petitioner to reinstate the respondent workman whereby giving an additional chance to the respondent workman to indulge into such

type of misconduct cannot be sustained and is requried to be quashed and set aside.

11. For the reasons stated above and discussion above, the present petition succeed and the impugned judgment and award passed by the labour court, Bharuch dated 14.2.2005 pased in Reference No.14 of 1998 is hereby quashed and set aside.

Rule is made absolute to the aforesaid extent.

Direct Service is permitted.

[M.R.Shah, J]

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